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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92058098
Party	Plaintiff Mr. Chris Hayman
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Submission	Motion to Amend Pleading/Amended Pleading
Filer's Name	Robert J. Lauson
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Date	10/28/2013
Attachments	haymanamendment.PDF(2114952 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Chris HAYMAN

Petitioner,

vs.

Craig VOYTON

Respondent.

Cancellation No. 92058098
Mark: SMART GRASS (And Design)
Registration No.: 4,278,726
Registration Date: Jan. 22, 2013

Attorney Docket Number: 13-29563

FIRST-AMENDED PETITION TO CANCEL

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

1. Petitioner is Chris Hayman, an individual, having a business address of 406 Amapola Avenue, Torrance, California 90501.
2. Petitioner is being damaged by registration of the above-identified trademark and hereby petitions to cancel the same.
3. In 2008 Petitioner began using SMART GRASS for Petitioner's artificial turf business. Several months later Petitioner engaged Respondent as a salesman of SMART GRASS artificial turf.

4. On May 5, 2011, effective January 1, 2010, Petitioner and Respondent entered into an Operating/Partnership Agreement in a signed writing, which stated at para. 12(E) that they jointly owned any intellectual property in their Smart Grass business.

5. In 2012 the parties ceased to do business together but the property of the partnership, including the SMART GRASS trademark rights, were never distributed or transferred to Respondent as his sole property.

6. Petitioner continues to use the identical SMART GRASS (And Design) mark for artificial turf, as per his clearly established rights to do so pursuant to the parties' partnership agreement and otherwise. Petitioner has not abandoned the mark and does not intend to do so.

7. On or about May 7, 2012 Respondent filed a use-based application to register SMART GRASS (And Design). In filing the application, the Respondent falsely stated he owned the mark, and that no other person had the right to use the mark (emphasis added):

Declaration

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; ***he/she believes the applicant to be the owner of the trademark/service mark sought to be registered***, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; ***to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive***; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: /Craig Voyton/ Date Signed: 05/05/2012

Signatory's Name: Craig Voyton

Signatory's Position: Owner

8. Respondent's application and declaration included false statements, and he knew them to be false. Respondent had no reasonable basis for believing he had exclusive ownership of the mark.

9. Further, Respondent has been sending attorney letters to Petitioner's website hosting companies, attaching copies of the fraudulently-obtained registration and demanding that Petitioner's www.smartgrassusa.com website be taken down.

Count I

Fraud in the Procurement of the Registration

15 U.S. C. 1064 (Lanham Act Sec. 14)

10. Petitioner repeats and realleges the allegations set forth in paragraphs 1 through 9 as though set forth herein.

11. At the time of Respondent's application, Petitioner was using the SMART GRASS (And Design) trademark, and was at least an equal owner of the mark as per the written agreement between the parties.

12. In applying to register SMART GRASS, Respondent made false statements including that he was the sole owner of the mark, and that no other person had the right to use the mark.

13. The false statements were material misrepresentations, in that the registration would not have been granted but for the misrepresentations.

14. The Respondent in making the false statements did so with the intent to deceive the U.S. Patent & Trademark Office, and to obtain a registration to which he knew he was not entitled.

15. Accordingly, the registration was obtained fraudulently and should be cancelled.

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Count II

Priority and Likelihood of Confusion, False Suggestion of Connection

Lanham Act Sections 2(d), 2(a)

16. Petitioner repeats and realleges the allegations set forth in paragraphs 1 through 15 as though set forth herein.

17. Petitioner began using the SMART GRASS mark in 2008 before Respondent was involved in the Smart Grass business.

18. Petitioner's first use of SMART GRASS was before Respondent's use of the identical mark for artificial turf.

19. Respondent's registration and use of SMART GRASS (And Design) will cause a likelihood-of-confusion, mistake or deception in the minds of prospective purchasers, as to the origin or source of Petitioner's goods associated with the identical SMART GRASS (And Design) mark for the same goods.

20. Purchasers familiar with the Petitioner's artificial turf are likely to mistakenly believe that the Respondent's artificial turf is somehow sponsored by, authorized, endorsed, affiliated with or otherwise approved by the Petitioner.

WHEREFORE, Petitioner prays for relief that this petition be GRANTED and the trademark registration removed from the register of marks.

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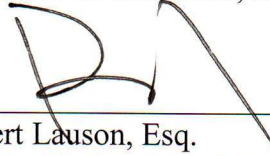
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The cancellation filing fee in the amount of \$300 per class for the single-class registration is submitted herewith. No additional fees are believed owed; if any additional fees are owed, please charge Petitioner's representative's deposit account no. 50-3116.

Respectfully submitted,

LAUSON & TARVER, LLP

A handwritten signature in dark ink, appearing to be 'R. Lauson', is written over a horizontal line.

Robert Lauson, Esq.
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El Segundo, CA 90245
Tel.: (310) 726-0892
Email: bob@lauson.com

Dated: Oct. 25, 2013.

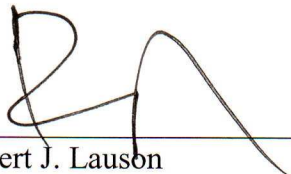
Attorney for Petitioner
Chris Hayman

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and complete copy of the foregoing Petition to Cancel has been served by mailing said copy on Oct. 25, 2013, via First Class Mail, postage prepaid to:

Mr. Craig VOYTON
P. O. Box 992
Hermosa Beach, CA 90254

Daniel M. Josephson, Esq.
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Costa Mesa, CA 92626



Robert J. Lauson